

Agreement Number _____

COOPERATIVE (MATCHING) AGREEMENT
CHARLESTON @ LAMB LANDSCAPING IMPROVEMENTS

This Agreement is made and entered into this _____ day of _____, _____, by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter called the DEPARTMENT, and City of Las Vegas, 731 South Fourth Street, Las Vegas, NV 89101, hereinafter called the CITY.

WITNESSETH:

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" and

WHEREAS, pursuant to the provisions contained in Chapter 408 of the Nevada Revised Statutes, the Director of the DEPARTMENT may enter into agreements necessary to carry out the provisions of the Chapter; and

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreement in accordance with NRS 277.080 to 277.110; and

WHEREAS, the purpose of this Agreement is to delegate authority to the CITY to design, advertise, award and manage construction of landscaping improvements at the Charleston Blvd. and Lamb Blvd. intersection as outlined in the Project Scope attached hereto and incorporated herein as Attachment A, hereinafter called the PROJECT; and

WHEREAS, the PROJECT has been selected and approved for funding under the Landscape and Aesthetics Community Matching Funds Program, under which this PROJECT is eligible for fifty percent (50%) State funds and fifty percent (50%) local funds; and

WHEREAS, this Agreement and the PROJECT is of mutual benefit to the DEPARTMENT and the CITY as it provides a means of designing and constructing a project in the most efficient and cost-effective method;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

ARTICLE I – CITY AGREES:

1. To perform or have consultants perform the design (including the development of plans, specifications and estimates), to complete the survey and right-of-way engineering to prepare mapping and legal descriptions of the new right-of-way parcels to be acquired, acquire right-of-way, obtain the environmental permits and clearances, advertise, award and manage construction for this PROJECT, as outlined in Attachment A, in accordance with State and local laws, regulations and policies. The PROJECT shall be designed and constructed in accordance with DEPARTMENT standards. The PROJECT shall be operated, and maintained in accordance with State laws, regulations, directives, and safety standards.

2. To hold a right-of-way setting at the sixty percent (60%) design stage. The right-of-way setting shall include Fee Acquisitions, Permanent and Temporary Easements, and Permission to Construct.
3. To provide mapping and legal descriptions of the new right-of-way parcels to be acquired to the DEPARTMENT for review.
4. To acquire all necessary right-of-way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.
5. To invite the DEPARTMENT to project meetings including field reviews, plan review meetings and the pre-construction conference.
6. To submit to the DEPARTMENT for review and approval, preliminary plans at sixty percent (60%), ninety percent (90%) and one hundred percent (100%) design stages. The ninety percent (90%) and one hundred percent (100%) submittals shall include the PROJECT specifications, cost estimate and bid documents.
7. To provide design exception documentation to the DEPARTMENT for approval.
8. To certify to the DEPARTMENT in writing that all right-of-way was acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. Written certification must be received thirty (30) days in advance of advertising the contract and include backup for all new right-of-way acquired.
9. To submit to the DEPARTMENT for review and approval, final sets of plans, specifications and estimates prior to advertising.
10. To obtain an encroachment permit from the DEPARTMENT, at no cost to the CITY, allowing the CITY to occupy the DEPARTMENT's right-of-way for the purpose of constructing and maintaining the PROJECT, prior to advertising the PROJECT.
11. To follow the terms and conditions of the encroachment permit and to incorporate those terms and conditions into the contract bid documents.
12. To obtain the DEPARTMENT's approval for all exceptions to DEPARTMENT and American Association of State Highway Officials (AASHTO) design standards.
13. To provide written certification that the design was completed to DEPARTMENT, AASHTO and/or Manual of Uniform Traffic Control Devices (MUTCD) standards.
14. To proceed with the PROJECT advertisement only after receiving written approval from the DEPARTMENT.
15. To perform the contract administration of the construction contract by providing appropriate personnel to observe, review, inspect, perform materials testing, be in responsible charge of the construction and be capable of answering any question that may arise in relation to the contract plan and specifications during construction, and to be responsible for insuring that all environmental permits and clearances requirements for monitoring and mitigation during construction of the Project are being met.

16. To submit to the DEPARTMENT for review and approval any addenda, supplementals and change orders and to receive DEPARTMENT approval for any addenda, supplementals and change orders prior to incorporating into the PROJECT.

17. To allow the DEPARTMENT or its designated representatives to observe, review, and inspect all work associated with the PROJECT during construction.

18. To perform PROJECT documentation and quality control during contract administration according to the CITY's established procedures, as approved by the DEPARTMENT. If the CITY does not have DEPARTMENT approved procedures, it must then follow the procedures contained in the DEPARTMENT's "Documentation Manual" and "Construction Manual," incorporated herein by reference.

19. To submit two (2) sets of as-built plans to the DEPARTMENT prior to requesting the final inspection.

20. To invoice monthly the DEPARTMENT with auditable support documentation as work progresses on the PROJECT, for actual PROJECT costs. Total reimbursement shall not exceed the total programmed amount, as established in ARTICLE II Paragraph 4. Invoices for preliminary engineering shall be forwarded to the DEPARTMENT's Stewardship Coordinator for processing. Invoices for the construction phase shall be forwarded to the DEPARTMENT's Resident Engineer for review. The Resident Engineer shall forward the invoice to the DEPARTMENT's Stewardship Coordinator.

21. To be responsible for the fifty percent (50%) match of State funds, estimated to be One Hundred Forty Seven Thousand and No/100 Dollars (\$147,000.00).

22. To accept maintenance responsibilities for the improvements constructed as part of the PROJECT including utility costs, upon completion and the DEPARTMENT's final written acceptance of the PROJECT.

23. To be responsible for all the CITY's costs associated with the acquisition of right-of-way.

ARTICLE II - DEPARTMENT AGREES:

1. To follow State Law, regulations and directives for developing and approving project designs, overseeing projects and administering contracts.

2. To delegate authority to the CITY to design (including the development of plans, specifications, and estimates), complete the survey and right-of-way engineering to prepare mapping and legal descriptions of the new right-of-way parcels to be acquired, acquire right-of-way, obtain the environmental permits and clearances, advertise, award, and manage construction of the PROJECT.

3. To assure that the CITY's actions are in accordance with State and local laws, regulations and policies.

4. To program State funding for a maximum of One Hundred Forty-seven Thousand and No/100 Dollars (\$147,000.00) for the PROJECT, and to set up a Project Identification

Number to track all PROJECT costs.

5. To review the mapping and legal descriptions or right-of-way acquisitions for the CITY to insure compliance with STATE regulations and standards. Cost not to be included as a PROJECT cost.

6. To insure the acquisition of right-of-way is in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. Cost not to be included as a PROJECT cost.

7. To coordinate environmental permits and clearances with the appropriate Regulatory Agency and the CITY based on the documentation provided by the CITY.

8. To review and comment on the CITY's design (including plans, specifications and estimates) in a timely manner.

9. To review the CITY design and assure that DEPARTMENT, American Association of State Highway Transportation Officials (AASHTO) and Manual of Uniform Traffic Control Devices (MUTCD) Guidelines are followed.

10. To review all exceptions to DEPARTMENT and AASHTO design standards, and to approve those exceptions when acceptable.

11. To invoke the DEPARTMENT's authority under NRS 408.210 (4) to require relocation or adjustment of any encroachments including utility facilities on DEPARTMENT permits occupying the DEPARTMENT's right-of-way pursuant to NRS 408.210 and/or NRS 408.423 needed to accommodate construction of the PROJECT.

12. To exercise final approval over utility adjustments that are within the DEPARTMENT's right-of-way and to have full authority to inspect said utility relocations.

13. To authorize the CITY to proceed with the advertisement/award of the contract and construction of the PROJECT, through a written notice, once the final design (including plans, specifications and estimates) has been reviewed and approved, all certifications have been completed and the funding authorized.

14. To assign a Project Coordinator and/or a Resident Engineer to act as the DEPARTMENT's representative to monitor all aspects of the PROJECT.

15. To issue an encroachment permit to the CITY, at no cost to the CITY, allowing the CITY to occupy the DEPARTMENT's right-of-way for the purpose of constructing and maintaining the PROJECT.

16. To reimburse the CITY, monthly as work progresses on the PROJECT, for fifty percent (50%) of eligible PROJECT costs based on supporting documentation. Total reimbursement shall not exceed the total programmed amount, as established in ARTICLE II Paragraph 4.

17. To transfer to the CITY its portion of maintenance responsibility after construction and upon final acceptance of the work within the limits of the PROJECT.

ARTICLE III - IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be from the date first written above through and including the 31st day of December, 2008 or until construction of all improvements contemplated herein have been completed and accepted by the DEPARTMENT, save and except the responsibility for maintenance as specified herein, whichever occurs first.

2. Each party agrees to complete a final inspection and punch list prior to final acceptance of the work by the DEPARTMENT.

3. The total PROJECT costs are Two Hundred Ninety-four Thousand and No/100 Dollars (\$294,000.00), which includes One Hundred Forty-seven Thousand and No/100 Dollars (\$147,000.00), comprising fifty percent (50%), of State funding, and a match of One Hundred Forty-seven Thousand and No/100 Dollars (\$147,000.00), comprising fifty percent (50%), which match shall be the responsibility of the CITY.

4. The following is a summary of estimated costs and available funds.

Estimated PROJECT Costs:

Construction Costs:	<u>\$ 294,000.00</u>
<u>Total Costs:</u>	\$ 294,000.00

Available Funding Sources:

DEPARTMENT State Funds:	\$ 147,000.00
CITY Funds:	<u>\$ 147,000.00</u>
<u>Total Funding:</u>	\$ 294,000.00

5. The CITY is responsible for the matching funds, which may be cash or in-kind services. The DEPARTMENT must approve in-kind services. In-kind services may include the preliminary engineering costs needed to complete the design of the PROJECT; the administrative costs associated with advertising and awarding the contract; the construction engineering costs to monitor the construction and perform inspection of the PROJECT, incurred by the CITY.

6. No PROJECT costs may be incurred until this Agreement is executed and the DEPARTMENT has issued a "Notice to Proceed."

7. The total PROJECT costs shall be determined by adding together the total costs incurred by the CITY for the construction engineering, and construction costs.

8. The DEPARTMENT does not provide any warranty that the estimate is an accurate reflection of the final cost. The DEPARTMENT disclaims any such warranty. The final costs may vary widely depending on the Contractor's bid prices.

9. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until thirty (30) days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of

both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason Federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.

10. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

FOR DEPARTMENT: Jeffrey Fontaine, P.E., Director
 Attn: Jason Tyrrell, P.E.
 Stewardship Coordinator
 Nevada Department of Transportation
 Roadway Design
 123 E. Washington Street
 P.O. Box 170
 Las Vegas, Nevada 89125
 Phone: (702) 671-8852
 Fax: (702) 671-8850
 E - mail address: jtyrrell@dot.state.nv.us

FOR CITY: Charles Kajkowski Jr, P.E., Director
 Attn: Greg McDermott, P.E.
 City of Las Vegas
 731 S. Fourth St.
 Las Vegas, NV 89101
 Phone: (702) 229-2143
 Fax: (702) 382-8551
 E -mail: gmcdermott@lasvegasnevada.gov

11. The CITY will award the total contract in accordance with its rules and procedures to the lowest responsive and responsible bidder.

12. The CITY will ensure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive property of the CITY and the DEPARTMENT. The CITY will ensure any consultant will not use, willingly allow or cause to have such documents used for any purpose other than performance of obligations under this Agreement without the written consent of the CITY and the DEPARTMENT. The CITY shall not utilize (and shall ensure any consultant will not utilize) any materials, information or data obtained as a result of performance of this Agreement in any commercial or academic publication or presentation without the express written permission of the DEPARTMENT. The CITY (and any consultant) shall not reference an opinion of an employee or agent of the DEPARTMENT obtained as a result of performance of this Agreement in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the DEPARTMENT.

13. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions,

recklessness or intentional misconduct of its own officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within 30 days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

14. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

15. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

17. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

18. All or any property presently owned by either party shall remain in such possession upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

19. In the event the Nevada Legislature does not appropriate sufficient or any funds for a DEPARTMENT biennium during the term of this Agreement, this Agreement shall terminate.

20. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

21. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

22. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct

performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

23. In connection with the performance of work under this Agreement, the PARTIES agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The PARTIES further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

24. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.

25. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to engage in the cooperative action set forth herein.

26. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

27. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

28. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

29. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF LAS VEGAS

State of Nevada, acting by and through its
DEPARTMENT OF TRANSPORTATION

Oscar B. Goodman
Mayor, City of Las Vegas

Director

Attest:

Reviewed:

Barbara Jo Ronemus
City Clerk

R. Scott Rawlins, P.E.
Assistant Director – Engineering

Approved as to Form:

Recommended:

Thomas R. Green 3/22/06
Thomas R. Green, Esq.
Deputy City Attorney

Mary Martini, P.E.
District 1 Engineer

Recommended:

Heidi A. Mireles
Chief Right-of-Way Agent

Approved as to Legality & Form:

Deputy Attorney General

Attachment A

SCOPE OF WORK CHARLESTON @ LAMB LANDSCAPING IMPROVEMENTS

The project consists of enhanced hardscape features including but not limited to; stamped sidewalks and crosswalks and decorative traffic signal poles. The Project is located on Charleston Blvd. (SR-159) at the intersection of Charleston Blvd. and Lamb Blvd (M.P. 32.55).